

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PENN AMERICA INSURANCE
COMPANY,

Plaintiff,

V.

Case No.: 1:17-cv-10351-DPW

CONSTRUCTION CONTRACTING AND
MAINTENANCE, LLC and EPOX-Z
CORPORATION,

Defendants.

**DEFENDANT EPOX-Z CORPORATION'S ANSWER TO PLAINTIFF'S AMENDED
COMPLAINT WITH AFFIRMATIVE DEFENSES**

The defendant EPOX-Z Corporation (“EPOX-Z”), hereby respectfully submits its Answer and Affirmative Defenses in response to the plaintiff's Amended Complaint for Declaratory Judgment (hereinafter the "Amended Complaint") dated March 7, 2017:

PRELIMINARY STATEMENT

1. EPOX-Z admits that Plaintiff's lawsuit is a civil action, but denies sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 1 of the Amended Complaint, and therefore leaves the plaintiff to its proof.

JURISDICTION AND VENUE

2. EPOX-Z denies sufficient knowledge or information to form a belief as to the allegations in paragraph 2 of the Amended Complaint, except admits that the amount in controversy as to CCM's liability exceeds \$75,000.

3. EPOX-Z denies sufficient knowledge or information to form a belief as to the allegation in paragraph 3 of the Amended Complaint.

PARTIES

4. EPOX-Z denies sufficient knowledge or information to form a belief as to the allegation in paragraph 4 of the Amended Complaint.

5. EPOX-Z denies sufficient knowledge or information to form a belief as to the allegations in paragraph 5 of the Amended Complaint.

6. EPOX-Z admits the allegations in paragraph 6 of the Amended Complaint.

FACTUAL BACKGROUND

7. EPOX-Z admits that CCM performed certain work on the roof of a building located at 57-65 48th Street, Maspeth, New York, but except as so specifically admitted, it denies sufficient knowledge or information to form a belief as to any other allegations in paragraph 7 of the Amended Complaint.

8. EPOX-Z admits that CCM performed certain work on the roof of the building as part of a project to install solar panels, but except as so specifically admitted, it denies sufficient knowledge or information to form a belief as to any other allegations in paragraph 8 of the Amended Complaint.

9. EPOX-Z denies sufficient knowledge or information to form a belief as to the allegation in paragraph 9 of the Amended Complaint.

10. EPOX-Z admits that Geyser entered into an agreement with ECGOA. EPOX-Z respectfully refers the Court to the document for the terms and conditions. EPOX-Z denies

sufficient knowledge or information to form a belief as to any other allegations in paragraph 10 of the Amended Complaint.

11. EPOX-Z admits that Geyser entered into an agreement with ECGOA. EPOX-Z respectfully refers the Court to the document for the terms and conditions.

12. EPOX-Z admits that ECGOA entered into an agreement with CCM to perform certain work on the Building but EPOX-Z denies sufficient knowledge or information to form a belief as to any other allegations in paragraph 12 of the Amended Complaint.

13. EPOX-Z admits that ECGOA entered into an agreement with CCM and that CCM was required to perform certain work on the roof of the Building but EPOX-Z denies sufficient knowledge or information to form a belief as to any other allegations in paragraph 13 of the Amended Complaint.

14. EPOX-Z denies that Exhibit E is a true copy, it refers the Court to the Amended Demand for Arbitration dated January 7, 2015 for any allegations referenced by Plaintiff, which were denied by EPOX-Z, and EPOX-Z further denies sufficient knowledge or information to form a belief as to any other remaining allegations in paragraph 14 of the Amended Complaint.

. 15. EPOX-Z denies that Exhibit E is a true copy, it refers the Court to the Amended Demand for Arbitration dated January 7, 2015 for any allegations referenced by Plaintiff, which were denied by EPOX-Z, and it further denies sufficient knowledge or information to form a belief as to any other remaining allegations in paragraph 15 of the Amended Complaint.

16. EPOX-Z admits that claims have been asserted against CCM in the arbitration by Geyser, ECGOA and EPOX-Z, and it respectfully refers this Court to the pleadings filed in the

arbitration and it further denies sufficient knowledge or information to form a belief as to any other remaining allegations in paragraph 16 of the Amended Complaint.

17. EPOX-Z denies sufficient knowledge or information as to the truth of the allegations contained in paragraph 17 of the Amended Complaint.

18. EPOX-Z denies sufficient knowledge or information as to the truth of the allegations contained in paragraph 18 of the Amended Complaint.

PENN-AMERICA POLICY PROVISIONS

19. EPOX-Z denies sufficient knowledge or information to form a belief as to the allegation in paragraph 19 of the Amended Complaint and refers the Court to CCM's insurance policy for its terms and conditions.

20. EPOX-Z denies sufficient knowledge or information to form a belief as to the allegation in paragraph 20 of the Amended Complaint.

21. EPOX-Z denies sufficient knowledge or information to form a belief as to the allegation in paragraph 21 of the Amended Complaint.

22. EPOX-Z denies sufficient knowledge or information to form a belief as to the allegations in paragraph 22 of the Amended Complaint.

23. EPOX-Z denies sufficient knowledge or information to form a belief as to the allegation in paragraph 23 of the Amended Complaint.

24. EPOX-Z denies sufficient knowledge or information to form a belief as to the allegation in paragraph 24 of the Amended Complaint.

25. EPOX-Z denies sufficient knowledge or information to form a belief as to the allegation in paragraph 25 of the Amended Complaint.

26. EPOX-Z denies sufficient knowledge or information to form a belief as to the allegation in paragraph 26 of the Amended Complaint.

27. EPOX-Z denies sufficient knowledge or information to form a belief as to the allegation in paragraph 27 of the Amended Complaint.

28. EPOX-Z denies sufficient knowledge or information to form a belief as to the allegation in paragraph 28 of the Amended Complaint.

29. EPOX-Z denies sufficient knowledge or information to form a belief as to the allegation in paragraph 29 of the Amended Complaint.

30. EPOX-Z denies sufficient knowledge or information to form a belief as to the allegation in paragraph 30 of the Amended Complaint.

**AS AND FOR A RESPONSE TO PLAINTIFF'S COUNT ONE – DECLARATORY
JUDGMENT**

31. Responding to paragraph 31 of the Complaint, EPOX-Z repeats and reasserts all responses made to the preceding paragraphs with the same force and effect as if set forth herein at length.

32. EPOX-Z denies the allegations contained in paragraph 32 of the Complaint.

33. EPOX-Z denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Complaint.

34. EPOX-Z denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint.

AFFIRMATIVE DEFENSES

EPOX-Z Corporation sets forth the following affirmative defenses to place the Plaintiff on notice and to advance the defenses in good faith to the extent that such defenses are supported by evidence adduced through discovery.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims against Defendant are barred, in whole or part, by waiver.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims against Defendant are barred, in whole or part, by the doctrine of res judicata.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims against Defendant are barred, in whole or part, by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims against Defendant are barred, in whole or part, by estoppel.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims against Defendant are barred, in whole or part, by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

The Answering Defendant reserves the right to assert additional affirmative defenses based upon further investigation and discovery.

WHEREFORE, the Answering Defendant EPOX-Z Corporation respectfully submits that this Honorable Court should dismiss all Counts of the Plaintiff's Amended Complaint and award reasonable costs and attorneys' fees to EPOX-Z Corporation for defending this action.

JURY DEMAND

The Defendant EPOX-Z demands a trial by jury on all issues so triable.

Respectfully submitted,

EPOX-Z CORPORATION
By its Attorney,

/s/ Leigh R. Trigilio

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Date: April 27, 2017

CERTIFICATE OF SERVICE

I, Leigh R. Trigilio, Esq., hereby certify that this document was filed through the ECF system on April 27, 2017 and will be sent electronically to all registered participants as identified on the Notice of Electronic Filing. A copy of the foregoing will be served by mail on any *pro se* parties or anyone unable to accept electronic filing.

/s/ Leigh R. Trigilio

Leigh R. Trigilio, Esq. (BBO No. 643522)